APPENDIX A

SUPREME COURT OF THE STATE OF TENNESSEE

ABBOTT ESTRIN,

Appellant,

v.

DAVIDSON EQUITY
HONORABLE ALFRED T. ADAMS,
CHANCELLOR.

W. F. MOSS, Commissioner of Agriculture of Tennessee,

Appellee.

FOR APPELLANT:

BEN WEST,
NASHVILLE, TENNESSEE.

FOR APPELLEE:

GEORGE F. McCANLESS,
Attorney General,
PAUL E. JENNINGS,
Assistant Attorney General,
NASHVILLE, TENNESSEE.

OPINION

This is an appeal from a decree of the Chancery Court upholding the constitutionality of Chapter 14 and Chapter 53 of the Public Acts of Tennessee, 1955 and 1961, respectively, codified as T. C. A. Chapter 6 of Title 43, Sections 609-618, inclusive. We affirm the Chancellor.

We will refer to the parties as they appeared in the trial court. Complainant, Abbott Estrin, is President of the Abbott Exterminating Company, a Tennessee corporation. The Company is engaged in the business of pest control and services customers in this and neighboring states. Pest control operators are regulated by the provisions of T. C. A. Sections 43-609–43-618, inclusive.

Defendant, W. F. Moss, Commissioner of Agriculture, is authorized and required to promulgate rules and regulations for the enforcement of the law.

T. C. A. Section 43-610 establishes a pest control licensing board.

T. C. A. Section 43-613 provides:

"Every licensed pest control operator shall enter into a written contract with the person, firm, or corporation employing him to prevent, control or eradicate termites and a separate contract must be given for each structure or building except that an industrial complex or group of buildings may be covered by a single contract when they are integral parts of one industrial unit, and a garage, pump house, or other outbuilding commonly a part of a residential establishment may be covered by the same contract as that covering the residence itself provided such garages, etc., are not used as separate residential units. In the case of pretreatment of new structures the contracts or warranties required by the federal housing administration, the veterans administration, or other federal agency, shall be construed to be contracts and deemed sufficient to satisfy the requirements of this section. Each licensed pest control operator shall be required to report each month's business to the department of agriculture within fifteen (15) days of the end of each calendar month. At the time the licensed pest control operator files his report of the previous month's business he shall be required to file with the commissioner of agriculture a copy of all contracts for termite service issued during the period covered by the report and shall pay to the department of agri- ($3.00 for each contract so reported. If any licensed pest control operator shall fail, neglect, or refuse to file the monthly report required above, by or before the specified date, such operator shall be required to pay a penalty of five dollars ($5.00) and an additional penalty for contracts that are not filed by the specified date in the amount of ten per cent (10%) of the operation fees required by this section for such contracts."

T.C.A. Section 43-614 provides, in part:

"Any license may be suspended by the commissioner of agriculture after a hearing for any of the following causes:

* * *

"(4) If the license holder shall fail to make the registrations and/or reports required in Sections 43-611 and 43-613 or shall fail to pay the fees required therein."

In January of 1967, complainant received a letter from the Commissioner. This letter was entitled: "Notice of intention to revoke license." The letter stated the grounds for revocation were, "failure to file with the Commissioner of Agriculture a copy of the contracts for termite service which are listed below and with failure to pay the Department of Agriculture an operation fee of $3.00 on each of the below listed contracts." A list of several hundred unreported contracts followed.

The letter set forth the provisions of the statute under which revocation was being instituted and complainant's right to a hearing, if requested.

Complainant received another letter from the Commissioner in February, 1967, which charged complainant with further similar violations as the first letter and listed several hundred new contracts unreported.

These letters were filed as exhibits to complainant's bill filed on March 8, 1967, which sought to restrain further action by the Commissioner on the ground T.C.A. Sections 43-609 through 43-618 were unconstitutional. The letters and a copy of "Rules and Regulations Governing Pest Control Operators," (Tennessee Department of Agriculture) are the only exhibits in the record.

Complainant insists Chapter 6 of Title 43 T.C.A. violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and Section 8 of Articles 1 and 11 of the Constitution of Tennessee as an unlawful classification of the pest control industry and an unconstitutional exercise of the police power of the legislature of this State.

If the legislation is for the beneficial interest of the public health, then it constitutes a reasonable exercise of

police power, and is exclusively for the determination of the legislature and not subject to judicial review. Tennessee Board of Dispensing Opticians v. Eyear Corp., 218 Tenn., 60, 400 S.W. (2d) 734 (1966).

The power of the legislature to regulate business is a valid exercise of the police power of the State.

> "The legislature of the State cannot prohibit an ordinary business but it may, regulate the business to promote the health, safety, morals, or general welfare of the public." Ford Motor Company v. Pace, 206 Tenn., 559, 335 S.W. (2d) 360 (1960).
>
> "This police power of the legislature embraces all matters reasonably deemed necessary or expedient for the safety, health, morals, comfort, domestic peace, private happiness, and welfare of the people." McKesson & Robbins v. Government Employees Department Store, 211 Tenn., 494, 365 S.W. (2d) 890 (1963).
>
> "Legislation affecting alike all persons pursuing the same business under the same conditions is not class legislation." 16 Am. Jur. (2d), Constitutional Law, Section 517, page 904.

It does not matter how many or how few persons are included in the classification. White Stores v. Atkins, 202 Tenn., 180, 303 S.W. (2d) 720 (1957).

The sole test of the constitutionality of any particular classification is that it must be reasonable; that is, made upon a reasonable basis. Kelley v. Byington, 185 Tenn., 421, 206 S.W. (2d) 409 (1947).

> "The later decisions of this Court and of the Federal Supreme Court have conceded to the legislature a very wide range of discretion in the matter of classification in police statutes and revenue statutes. The idea is that, if any possible reason can be conceived to justify the classification, it will be upheld." Ogilvie v. Hailey, 141 Tenn., 392, 210 S.W. 645 (1918).

The reasonableness of any particular classification depends upon the particular facts of the case.

> "There is no general rule by which to distinguish reasonable and lawful from unreasonable and arbitrary classification, the question being a practical one, dependent on experience and varying with the facts in each case." Dillworth v. State, 204 Tenn., 522, 322 S.W. (2d) 219 (1959).

The Chapter of T.C.A. under attack provides for the regulation of persons or other entities engaged in the business of controlling pest and plant diseases. Under Section 43-609: "Any person, firm or corporation who shall for compensation, give advice or engage in work, for the control or eradication of insect pests, plant diseases, pest animals, wood destroying organisms, or who shall solicit such work in any manner, shall first have secured a license from the State Department of Agriculture. Any person desiring such a license shall make written application to the State Department of Agriculture, stating the kind of work for which the license is desired. The person who is to be in charge of the applicant's pest control operation shall then be examined by a pest control licensing board hereinafter provided for." And, "When the pest control licensing board shall have certified to the Department of Agriculture that an applicant is qualified for a license, the Commissioner of Agriculture or his authorized representative shall designate said person as a qualified operator, and shall issue to the applicant a license * * * ." Each applicant must pay a registration fee and furnish a fidelity bond, before engaging in such business.

By the provisions of Section 43-613, "every licensed pest control operator," who is employed, "to prevent, control or eradicate termites," must enter into separate written contracts with each customer from whom he performs any service relating to termite control or eradication. A copy of each contract must be filed with the Department of Agriculture and a fee of $3.00 paid for each contract. All pest control operators, whether in the termite business or

not, are required to file monthly reports, and where an operator is engaged in the termite service, he must report the contracts and pay the fees each month.

Complainant insists Section 43-613 is unconstitutional because the Section singles out termite exterminators and requires them to make and file written contracts, and pay a $3.00 fee. It is argued this constitutes an unlawful and unconstitutional classification. The argument is it is constitutionally unfair to treat termite exterminators any differently than the whole of the pest control industry.

The burden of showing the classification does not rest upon a reasonable basis is upon complainant. Darnell v. Shepard, 156 Tenn., 544, 3 S.W. (2d) 661 (1928); Terrell v. State, 210 Tenn., 632, 361 S.W. (2d) 489 (1962). If any possible reason can be conceived to justify the classification, or if the reasonableness be fairly debatable, this Court must uphold it. Phillips v. State, 202 Tenn., 402, 304 S.W. (2d) 614 (1956).

Complainant insists there are no reasons for imposing the extra statutory burdens of Section 43-613 on termite exterminators, and the requirements of Section 43-613 are not substantially related to public health, safety, or welfare. In support of his contention, he cites Livesay v. Tennessee Board of Examiners in Watchmaking, 204 Tenn., 500, 322 S.W. (2d) 209 (1949), in which this Court held the occupation of watchmaking could not be regulated under the police powers of the State since it did not involve the public health, safety or welfare. Obviously, this case is not in point.

Exhibit "C" to the complainant's bill is a copy of the "Rules and Regulations Governing Pest Control Operators." These regulations, issued by the Department of Agriculture pursuant to Section 43-615, include a detailed schedule of required methods of termite treatment and extermination. The treatment involves the application of highly toxic poisons to private residential as well as commercial buildings. Section 43-615 specifically authorizes the Department

of Agriculture to set certain minimum standards of service and to regulate enforcement of its provisions. The regulations further provide for periodic inspections by the Commissioner or his agents for the purpose of determining whether licensed operators are maintaining the minimum standards. Where the services of an operator are substandard, Section 43-614 provides for suspension or revocation of the license.

When the Sections under attack and the regulations are read, we think it clear the legislature has required the business of termite extermination be regulated in order to protect the health, safety and welfare of the citizens of this State. We do not think the business of watchmaking, as considered in the Livesay case, is analogous to the business of termite eradication.

Further, we do not think it arbitrary or unreasonable to place the business of termite extermination into a single class for the purpose of regulation. No licensed pest control operator has been singled out or discriminated against. All persons, or other entities, engaged in the business of termite extermination must follow the same regulations.

Complainant insists no reason is given in the body of the statute for classifying the business of termite extermination in Section 43-613, and urges that this failure to give a reason renders it unconstitutional. We see no merit in this argument.

The question of whether the business of termite eradication should be regulated to the extent indicated by this Section is a question of public policy, public policy being the present concept of the public welfare or general good. Ford Motor Company v. Pace, supra. This Court has nothing to do with questions of policy. Nashville, Chattanooga & St. Louis Railway v. Marshall County, 161 Tenn., 236, 30 S.W. (2d) 268 (1930). These are considerations solely for the legislature. Motlow v. State, 125 Tenn., 557, 145 S.W. 177 (1911); Davidson County v. Rogers, 184 Tenn., 327, 198 S.W. (2d) 812 (1947).

We are of the opinion it is unnecessary the legislature spell out in the body of a particular Act its reasons for adopting one particular policy or another. "The Courts cannot require the legislature to specify its reasons for a classification." 16 Am. Jur., (2d) Section 496, page 865.

Complainant also argues that Section 43-613 unjustly discriminates against the smaller businesses engaged in termite extermination since it requires a fee of $3.00 for each contract regardless of the size of the contract, whether the contract covers a single house or a large commercial complex. Complainant insists this requirement results in inequality.

A classification is not unconstitutional merely because in practice it results in some inequality, where the classification has a reasonable basis. Cosmopolitan Life Insurance Company v. Northington, 201 Tenn., 541, 300 S.W. (2d) 911 (1957).

So long as the regulation applies equally and consistently to all persons in the same class under similar facts and circumstances, the inequality or differential in the total amount of fees paid is not unconstitutional.

It is next insisted by complainant that Sections 43-609 and 43-613 are so vague, indefinite and ambiguous as to violate the constitutional guarantees of due process.

In considering this question, we do so keeping in mind the basic presumption in favor of the constitutionality of the legislative enactment. Corn v. Fort, 170 Tenn., 377, 95 S.W. (2d) 620, 106 A.L.R. 647 (1936).

> "For the purpose of determining the constitutionality of a statute, it is the function of the court first to ascertain its meaning by the application of ordinary canons of construction, and then to decide whether, as thus construed, the enactment is within the scope of the legislative power.
>
> "It is not the form of a statute or the words that are used, but the object intended and the result reasonably effected by their use that must control the

determination." Peay v. Nolan, 157 Tenn., 222, 7 S.W. (2d) 815, 60 A.L.R., 408 (1928).

It is insisted Section 43-609 is unclear as to who must be licensed; that is, the corporation or an officer or employee thereof or both.

Complainant further argues because of the ambiguity existing in Section 43-609; Section 43-613, regarding the filing of contracts and payment of fees, becomes ambiguous to the extent it would not be an unreasonable construction to require both an employee and the corporation to pay fees.

Finally, complainant asserts the ambiguity of Section 43-609 and 43-613 render Sections 43-614 and 43-617 ambiguous to such an extent they are unenforceable.

Admittedly, at first glance Section 43-609 is somewhat confusing, and difficult to read. The sentences are long and involved in complicated syntax, such terms as "applicant," "person," "qualified operator," and "licensee," are not defined. However, a second reading of the statute reveals its meaning, especially when read in conjunction with the "Rules and Regulations."

It is a familiar rule of statutory construction, where a statute is of doubtful meaning and subject to construction, that administrative interpretations, especially where they are unchallenged over a long period of time, are accorded persuasive weight by the court and will usually be followed unless palpably erroneous. Gallagher v. Butler, 214 Tenn., 129, 378 S.W. (2d) 161 (1963).

From reading the "Rules and Regulations" which were formulated and approved in February of 1961, we find definitions of terms and a full explanation of the application and licensing procedures. These regulations in no way contradict or go beyond the express limitations of Section 43-609 and tend to clarify the confusion which is occasioned by the awkward wording of the Section.

Complainant argues, however, we should not consider the administrative interpretation of the statute, because the

rules of statutory construction and administrative interpretation have no relevancy to the constitutionality of the statute. We do not agree.

The constitutionality of a statute is not determined by its wording or form, but by the object intended and the result effected. Peay v. Nolan, supra.

It is only when the wording of a statute is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application," that the statute is unconstitutional. Connally v. General Construction Company, 269 U.S. 385, 70 L.Ed. 322 (1925). Section 43-609 is not so vague or ambiguous that we must guess or differ as to its meaning.

The Sections under attack, when read in their entirety, clearly indicate a person, after examination and certification by the licensing board, becomes a qualified operator. It is also clear a person, firm or corporation must hold a license to do business and this license is issued after an employee or principal obtains a qualified operator's license. This is the construction of the Department of Agriculture. Moreover, this interpretation was evidently understood by complainant. The record reveals licenses were issued to Estrin as a qualified operator and Abbott Exterminating Company to do business in the pest control field in 1959.

It is clear a person must make application and take an examination to qualify for a license as a qualified operator. Obviously, a corporation cannot take an examination.

Section 43-613 plainly states a licensed pest control operator, "shall be required to file with the Commissioner a copy of all contracts for termite service issued during the period covered by the report and shall pay to the department of agriculture an operation fee of three dollars ($3.00) for each contract so reported." We see no ambiguity in this language. It is clear only one copy of each contract is required to be filed and one fee paid for each contract.

The entity, the qualified operator and employees of the entity each are not required to file copies of contracts and pay the fees. This is a reasonable construction of the Section and the construction complainant has been required to follow. There has not been any attempt by defendant to require dual filings of contracts or the payment of more than one fee for each contract. Complainant, therefore, has no standing to attack the constitutionality of the Section.

> "We will not pass on the constitutionality of a statute, or any part of one, unless it is absolutely necessary for the determination of the case and of the present rights of the parties to the litigation." Phillips v. West, 187 Tenn., 57, 213 S.W. (2d) 3 (1948); West v. Carr, 212 Tenn., 367, 370 S.W. (2d) 469 (1963).

Section 43-614 is not ambiguous in itself. Nor is it rendered ambiguous by Sections 43-609 and 43-613. The Section clearly states, "any license," may be suspended or revoked after a hearing. Any other interpretation would emasculate the effectiveness of the Section.

With respect to Section 43-617, this Section provides any person, firm or corporation who shall violate any provisions of the Chapter shall be deemed guilty of a misdemeanor and if found guilty thereof shall be required to pay a stated fine. Complainant has not been charged under this Section. Complainant, therefore, has no standing to assert the unconstitutionality of the Section. Phillips v. West, supra; West v. Carr, supra.

Complainant contends empowering the Commissioner and the Department of Agriculture to promulgate rules and regulations constitutes an unconstitutional delegation of legislative power.

The legislature may create laws which delegate to administrative bodies the power to promulgate rules and regulations to carry out the laws. Gamble v. State, 206 Tenn., 376, 333 S.W. (2d) 816 (1960); Tasco Corporation v. Long, 212 Tenn., 96, 368 S.W. (2d) 65 (1963).

Complainant insists Section 43-614 is unconstitutional on the ground that it permits him to be deprived of his license without due process of law.

It is true his license constitutes a property right. State Board of Medical Examiners v. Friedman, 150 Tenn., 152, 263 S.W. 75 (1923). Of course, a property right may not be revoked without due process of law.

Complainant argues four basic reasons for finding the Section in violation of due process: no hearing is required for the suspension of a license; any person who receives notice of suspension or revocation of his license must apply in writing to the Commissioner in order to obtain a hearing; the burden of proof is placed on the recipient of a "notice of intention to revoke license"; and that the Commissioner before whom the hearing must be held acts both as judge and prosecutor, thus he is not fair and impartial as required by due process.

The Section reads that, "any license may be suspended by the Commissioner of Agriculture after a hearing," for various enumerated causes. Complainant alleges violation of due process is based on the following part of the statute:

> "A license shall automatically be suspended should the qualified operator, whose name appears on the license, cease to be in charge of the license holder's pest control operations. * * *"

It is insisted this procedure constitutes a violation of due process, because it fails to provide for a hearing.

We find no merit in this argument for several reasons. In the next paragraph of the same Section, the legislature has specifically provided that any person receiving a notice of suspension of a license may appeal for a hearing by making application to the Commissioner. Furthermore, a one hundred twenty day grace period is allowed before a license is automatically suspended, during which time the licensee may obtain or qualify another of his personnel as a "qualified operator."

The Section further provides:

> "Any person, firm, or corporation receiving a notice of suspension of a license or notice of intention to revoke a license, who desires to appeal for a hearing before the Commissioner of Agriculture, must file an application in writing requesting a hearing before the Commissioner."

Complainant argues since he is required to make application for a hearing such requirement places an unconstitutional burden on him. Complainant cites no authority to support his contention, and we have been unable to find any such authority. In fact, our review of the case law of administrative procedure reveals an application to the administrative agency for a hearing is a customary procedure. We do not see how it might result in a denial of due process.

Section 43-614 provides for adequate notice of the hearing, subpoena of witnesses, representation of all parties by Counsel, preparation of a court record of the proceedings, review of the Commissioner's ruling by certiorari to the Circuit Court, and appeal to the Supreme Court where any party dissatisfied may have a re-examination of the whole matter of law and facts appearing in the record. We think these provisions constitute due process of law insofar as the rights of complainant to a fair and impartial hearing are concerned.

The law is clear that no particular form of procedure is required to constitute due process in administrative hearings. Louisville Gas and Electric Company v. F.P.C., 129 F. (2d) 126 (1942), certiorari denied 318 U.S. 761, 63 S.Ct. 559, 87 L.Ed. 1133; N.L.R.B. v. Prettyman, 117 F. (2d) 786 (1941).

> "Statutory proceedings affecting property rights, which, by later resort to the court, secure to adverse parties an opportunity to be heard, suitable to the occasion, do not deny due process." Anderson National Bank v. Luckett, 321 U.S. 233, 88 L.Ed. 692, 64 S.Ct. 599, 151 A.L.R. 824 (1943).

The Section does not operate to shift the burden of proof to complainant at a hearing before the Commissioner, as argued by complainant. The Section is silent as to which party has the burden of proof.

> "It is generally held that the proper allocation of the burden of proof is among the essential rules of evidence which must be observed in adjudications by administrative agencies. As in court proceedings the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." 1 Am. Jur. (2d), Administrative Law, Section 391.

In cases involving the revocation or refusal to renew a license, the burden of proof is generally on the State or administrative agency which asserts in favor of revocation. Walker v. City of San Gabriel, 20 Calif. (2d) 879, 129 P. (2d) 349, 142 A.L.R., 1383 (1942); Philadelphia Company v. Securities and Exchange Commission, 84 App.D.C. 73, 175 F. (2d) 808 (1949); Alaska Alcoholic Beverage Control Board v. Malcolm, Inc., 391 P. (2d) 441 (1964).

We are of the opinion Section 43-614 does not shift the burden of proof to a licensee at a hearing before the Commissioner.

We see no merit in the argument the Commissioner would be biased or prejudiced at any hearing of complainant's case, simply because the Commissioner instituted an investigation of complainant's business and authorized a notice of suspension or revocation to be mailed.

It cannot be assumed that the Act will be administered otherwise than in full compliance with the State and Federal Constitutions. Seawell v. Beeler, 199 Tenn., 438, 287 S.W. (2d) 54 (1956).

The fact an administrative board is authorized to make a preliminary investigation and then file charges and also adjudge the controversy at the hearing is not a denial of due process. Smith v. State Board of Accountancy, 271 S.W. (2d) 875 (Ky. 1954).

> "The case law, both federal and state, generally rejects the idea that the combination with judging or prosecuting or investigating functions is a denial of due process, although a few exceptions can be found." 2 Davis, Administrative Law, Section 13.02.

It results all assignments of error are overruled and the decree of the Chancellor is affirmed. Complainant will pay the costs.

/s/ CHESTER C. CHATTIN
Justice

BURNETT, C. J.,
DYER, CRESON AND
HUMPHREYS, JJ., CONCUR.

[Caption Omitted in Printing]

ON PETITION TO REHEAR

Appellant has filed a petition to rehear in which he requests this Court to clarify our original opinion to show the "Notice of Intent to Revoke License," referred to in the opinion, related solely to termite control and not to other activities covered by his license.

This matter was not considered and adjudged by the Chancellor.

> "This Court will not grant relief which was not sought in the trial court, and sought for the first time on a petition to rehear in this Court." Lawler v. McCanless, 220 Tenn., ___, 417 S.W. (2d) 548 (1967).

The petition is denied at the cost of petitioner.

/s/ CHESTER C. CHATTIN
Justice

APPENDIX B

DECREE OF JULY 6, 1967–MINUTE BOOK 78; PAGE 408

ABBOTT ESTRIN, ET AL.

VS. NO. 89772

W. F. MOSS, COMMISSIONER, ETC., ET AL.

IN THE CHANCERY COURT, PART TWO, AT NASHVILLE.

DECREE

This cause was heard on bill and answer pursuant to motion of complainant, argument and briefs of counsel from all of which the Court is of the opinion that Tennessee Code Annotated Section 43-609 through 43-618 do not violate the Constitutions of the United States and the State of Tennessee and therefore are not illegal and void.

The Court is further of the opinion that the rules and regulations promulgated by the Commissioner of Agriculture of the State of Tennessee, pursuant to the provisions of said sections of Tennessee Code Annotated, do not violate the Constitutions of the United States and the State of Tennessee, and, further, that the action of the Commissioner of Agriculture of the State of Tennessee in sending the "Notice of Intention to Revoke License", under dates of January 23, 1967 and February 24, 1967, is in conformity with said sections of the Code and the regulations promulgated by said Commissioner and is therefore not illegal and void.

ALL OF WHICH IS ACCORDINGLY SO ORDERED, ADJUDGED AND DECREED BY THE COURT.

It is further ordered, adjudged and decreed by the Court that the injunction heretofore issued in this cause be, and the same is, hereby dissolved and the original bill dismissed at the cost of complainants for which let execution issue.

_____

CHANCELLOR

This 6th day of July, 1967

APPENDIX C

INSECT PESTS, RODENTS AND PLANT DISEASES CONTROL AND ERADICATION

43-609. BUSINESS OF PEST AND PLANT DISEASE CONTROL—LICENSE. — Any person, firm, or corporation, who shall for compensation, give advice or engage in work, for the control or eradication of insect pests, plant diseases, pest animals, wood destroying organisms, or who shall solicit such work in any manner, shall first have secured a license from the State Department of Agriculture. Any person desiring such a license shall make written application to the State Department of Agriculture, stating the kind of work for which the license is desired. The person who is to be in charge of the applicant's pest control operation shall then be examined by a pest control licensing board hereinafter provided for, and if said board shall find that said person is competent and qualified to do the kind of work in which the applicant desires to engage, said board shall certify this finding to the Department of Agriculture. The Pest Control Licensing Board shall certify qualified aplicants in two classes, to wit: Certification of the first class shall be given to those applicants who are determined by the board to be fully qualified to design or recomemnd treatment procedures and, with full responsibility and without supervision, direct and supervise all pest control work in a specific category. Certification of the second class shall be given to those applicants who are determined by the board to be qualified to give, under general supervision, detailed direction and supervision to laborers and/or treating crews.

When an applicant has been examined by the licensing board and found not qualified to hold the license applied for, he may be re-examined at a subsequent examination date in accordance with regulations promulgated by the licensing board, provided that each application for re-examination shall be accompanied by an examination fee of $10. Pro-

vided further that separate application and examination fee must be filed by the applicant each time that he is re-examined.

When the Pest Control Licensing Board shall have certified to the Department of Agriculture that an applicant is qualified for a license, the Commissioner of Agriculture or his authorized representative shall designate said person as a qualified operator, and shall issue to the applicant a license of the type corresponding to the class of qualification certified by the Board, provided the fees hereinafter required have been paid and the bond hereinafter required is acceptable. The license shall show the class of qualification of the licensee, shall specify the kind of work in which the license holder is authorized to engage, and shall show the name and address of the person, firm, or corporation to which it is issued and also the name of the qualified operator, if the qualified operator is other than the license holder. If the location or address of a license holder shall be changed while a license is in force, it shall be the responsibility of the license holder to notify the Department of Agriculture of this fact, furnishing information of the new location or address, within 10 days of the date of change of location or address. Provided that no person, firm, or corporation shall be licensed as an independent business unless at least one person who is to be in charge of the person's, firm's, or corporation's pest control operation shall have been certified as qualified in the first class as hereinbefore set forth, and provided further that each branch office of a pest control business, firm, or corporation shall be under the direct supervision of a resident qualified operator. Provided further that nothing in the requirements of this section shall be construed to invalidate licenses that have already been granted under statutes or provisions prior to the enactment of this Act. (Acts 1955, Ch. 14, Sec. 1.) (Amended Acts 1961, Ch. 53, Sec. 1.)

43-610. LICENSING BOARD CREATED—MEMBERS — EXAMINATION OF APPLICANTS.—A pest control licensing board is hereby established and such board shall consist of the Commissioner of Agriculture, the Director of Entomology and Plant

Pathology, an entomologist from the teaching, experiment station, or extension staff of the state university, and two licensed pest control operators. The three last named members of such board shall be appointed by the governor for a term of three years except that for the term beginning April 1, 1961 the governor shall appoint one of these board members for a term of one year, one for a term of two years, and one for a term of three years. The board members from the department of agriculture and from the state university shall have the power to designate a representative to serve in their place at a board meeting when other official duties make it impossible for them to attend such meeting in person. Said board shall have authority to determine the qualifications and eligibility of applicants under the provisions of this chapter and the regulations promulgated pursuant thereto, and shall examine such applicants at such periods and in such manner as shall be specified in regulations to be promulgated by said board. No applicant shall be eligible unless he shall have had at least two (2) years experience in the professional services for which an examination is requested or, in lieu thereof, shall have had at least two (2) years study in a recognized college or university majoring in subjects devoted to the professional field in which he proposes to engage. An applicant shall specify the field or fields of pest control in which he desires to secure a license and he shall be examined in any or all of the fields of: Consulting entomology, general; consulting plant pathology, general; structural pest control, household pest control; storage, warehouse, and transportation pest control; fumigation; agricultural pest and disease control, general; agricultural pest and disease control, aircraft application; control of insects affecting man and animals; horticultural spraying; and, rodent control; as shall be applicable to the work in which he proposes to engage. Such applicant must demonstrate a general knowledge of: the pests and/or diseases he proposes to treat or advise treatment for; generally accepted control methods for the aforesaid pests and/or diseases; the chemicals generally accepted and or recommended for use in such control; dosage requirements and methods of

application of such chemicals and hazards pertaining to the use of such poisonous chemicals and precautions necessary for their safe use and handling. (Acts 1955, Ch. 14, Sec. 2) (Amended Acts 1961, Ch. 53, Sec. 2.)

43-611. LICENSE FEE — REGISTRATION AND FEE FOR SOLICITORS.—The fee for the issuance of the license shall be ten dollars ($10.00), and the license shall expire on June 30th of each year. The license holder shall register with the commissioner of agriculture the name of all solicitors and agents, and shall pay to the said commissioner a registration fee of three dollars ($3.00) for each solicitor or agent at the time his name is registered. All registrations shall expire when the license expires. (Acts 1955, Ch. 14, Sec. 3.)

43-612. LICENSE BOND — SUITS AGAINST PRINCIPAL AND SURETY.—Each applicant for a license shall furnish to the Department of Agriculture, before license is issued, a fidelity bond satisfactory to the commissioner and conditioned that the principal therein named shall honestly conduct said business in accordance with the pest control laws of this state and the rules and regulations promulgated thereunder and shall faithfully perform pest control work that he has contracted to do. The amount of bond shall be one thousand dollars ($1,000). Provided further that any person having a right of action against such licensee may bring suit against the principal and sureties of such bond. (Acts 1955, Ch. 14, Sec. 4.) (Amended Acts 1961, Ch. 53, Sec. 3.)

43-613. WRITTEN CONTRACTS MANDATORY —FEE FOR EACH CONTRACT—MONTHLY REPORTS.—Every licensed pest control operator shall enter into a written contract with the person, firm, or corporation employing him to prevent, control, or eradicate termites and a separate contract must be given for each structure or building except that an industrial complex or group of buildings may be covered by a single contract when they are integral parts of one industrial unit, and a garage, pump

house, or other out-building commonly a part of a residential establishment may be covered by the same contract as that covering the residence itself provided such garages, etc., are not used as separate residential units. In the case of pretreatment of new structures the contracts or warranties required by the Federal Housing Administration, the Veterans Administration, or other federal agency, shall be construed to be contracts and deemed sufficient to satisfy the requirements of this section. Each licensed pest control operator shall be required to report each month's business to the department of agriculture within 15 days of the end of each calendar month. At the time the licensed pest control operator files his report of the previous month's business he shall be required to file with the commissioner of agriculture a copy of all contracts for termite service issued during the period covered by the report and shall pay to the department of agriculture an operation fee of three dollars ($3.00) for each contract so reported. If any licensed pest control operator shall fail, neglect, or refuse to file the monthly report required above, by or before the specified date, such operator shall be required to pay a penalty of $5.00 and an additional penalty for contracts that are not filed by the specified date in the amount of 10% of the operation fees required by this section for such contracts. (Acts 1955, Ch. 14, Sec. 5.) (Amended Acts 1961, Ch. 53, Sec. 4.)

43-614. LICENSE REVOCATION — HEARING.— Any license may be suspended by the commissioner of agriculture after a hearing for any of the following causes:

(1) If the license holder shall receive compensation for advice or for work pertaining to the control or eradication of insect pests, plant diseases or rodents, other than that covered by the license.

(2) If the license holder or any employee, solicitor or agent or representative shall make misrepresentation for the purpose of defrauding, or shall make promises which are not carried out, or shall use methods or materials which are not suitable for the

purpose for which they are employed, or shall fail to meet minimum standards as set forth in regulations promulgated under the provisions of this act.

(3) If the license holder shall fail to give the state department of agriculture or its duly authorized representative, upon request, true information regarding methods and materials used, work performed, or other information essential to the administration of this chapter.

(4) If the license holder shall fail to make the registrations and/or reports required in Section 43-611 and 43-613 or shall fail to pay the fees required therein.

(5) If the license holder shall otherwise fail to conduct his business as required by this act or by rules and regulations promulgated under the provisions of this act.

A license shall automatically be suspended should the qualified operator, whose name appears on the license, cease to be in charge of the license holder's pest control operations, provided that a grace period shall be extended to such a license holder sufficient for another person to be examined in accordance with Sec. 43-609 and regulations adopted thereunder, but provided further that such grace period shall not extend for more than 120 days. Any license suspended under this provision shall remain suspended until some duly qualified person shall be designated as qualified operator for the office or firm whose license has been suspended. Any suspension shall continue until the violations or circumstances causing such suspension have been corrected or removed to the satisfaction of the commissioner of agriculture.

Any license may be revoked by the commissioner of agriculture for any of the above reasons when violations are wilful or persistent or for any serious or flagrant violation of the requirements of this act or regulations promulgated thereunder. Any person, firm, or corporation receiving a notice of

suspension of a license or notice of intention to revoke a license, who desires to appeal for a hearing before the commissioner of agriculture, must file an application in writing requesting a hearing before the commissioner. Such application for hearing must be filed with the commissioner of agriculture, at Nashville, within ten days (10) from the date of issuance of said enforcement order. Upon filing the application for review, the commissioner of agriculture shall set a date for hearing and the date of said hearing shall be set within thirty days (30) from the day the application is filed. However, the actual date of the hearing before the commissioner need not be within said thirty-day period. The commissioner of agriculture is empowered to subpoena witnesses and compel their attendance at hearings authorized hereunder. All parties to the proceeding, including the person making application for the hearing, shall have the right to be represented by counsel and shall also have the right to have subpoenas issued by the commissioner to compel the attendance of all witnesses deemed by such parties to be necessary for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the cost of such proceeding.

At the hearing provided for herein, the commissioner shall provide a stenographer or court reporter to take a stenographic record of the evidence adduced at such hearing. The applicant or protestant shall be entitled to a copy of said stenographic record upon application thereof and upon paying the reasonable cost thereof to be fixed by the commissioner. At the conclusion of the hearing the commissioner shall issue the order and make such findings in his discretion as the record justifies.

The action of the commissioner and the order issued by the commissioner may be reviewed by petition for common law writ of certiorari, addressed to the Circuit Court of Davidson County, which petition shall be filed within ten days (10) from the date the order of the commissioner is made.

Immediately upon the grant of the writ of certiorari the commissioner shall cause to be made, certified and forwarded to said court a complete transcript of the proceedings in said cause, which shall contain all the proof submitted before the commissioner. All defendants named in the petition desiring to make defense shall answer or otherwise plead to said petition within ten days (10) from the date of the filing of said transcript unless the time be extended by the court.

Said decision of the commissioner shall be reviewed by the circuit court solely upon the pleadings and the transcript of the proceedings before the commissioner, and neither party shall be entitled to introduce any additional evidence in the circuit court.

Either party dissatisfied with the judgment or decree of the circuit court may, upon giving bond as required in other suits, appeal to the Supreme Court, and have a re-examination, in that court, of the whole matter of law and fact appearing in the record. Provided that when any such appeal is made the clerk of the circuit court in which such suit was pending shall include as a part of the record the original certified transcript of the proceedings had before the commissioner of agriculture when identified by the trial judge instead of a bill of exceptions, which need not be made and filed. (Acts 1955, Ch. 14, Sec. 6.) (Amended Acts 1961, Ch. 53, Sec. 5.)

43-615. RULES AND REGULATIONS — MINIMUM STANDARDS.—The commissioner of agriculture is hereby authorized and required to promulgate rules and regulations for the enforcement of this chapter and for the definition of minimum technical standards for the methods to be used in the performance of pest control by persons licensed under the provisions of this chapter. (Acts 1955, Ch. 14, Sec. 7.)

43-616. PERSONS AND PROPERTY EXEMPT.—This chapter shall not apply to anyone working on his own premises or to wage employees under direct supervision of the person who owns or is in charge

of the property on which the pest control work is being done, or to the sale of insecticides or fungicides provided these are labeled to show the name and address of the manufacturer, or vendor, the specific purposes for which recommended, and the directions for use. (Acts 1955, Ch. 14, Sec. 8.)

43-617. PENALTY.—Any person, firm or corporation who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than fifty dollars ($50.00) for the first offense and not less than one hundred dollars ($100.00) for each subsequent conviction. (Acts 1955, Ch. 14, Sec. 9.)

43-618. DISPOSITION OF FUNDS COLLECTED. —All funds collected under the provisions of this chapter shall be paid into the treasury of the state, and the same are hereby appropriated exclusively to the department of agriculture to be used in carrying out the provisions of this chapter. (Acts 1955, Ch. 14, Sec. 10.)
Acts of 1961, Ch. 53

PASSED: February 8, 1961

APPROVED: February 16, 1961

APPENDIX D

REGULATIONS ISSUED UNDER THE PEST CONTROL LAW

Chapter 14, Public Acts of 1955
Chapter 53, Public Acts of 1961

We, William F. Moss, Commissioner of Agriculture, State of Tennessee, and H. L. Bruer, Director of Entomology and Plant Pathology, State of Tennessee, by virtue of and pursuant to the authority of the Tennessee Pest Control Act, Section 7, Chapter 14, Public Acts of 1955, being Sections 43-609 through 43-618, inclusive, of the Tennessee Code Annotated, Chapter 53, Public Acts of 1961, and the general statutes relating to the issuance of rules and regulations, being Sections 4-501 through 4-506, inclusive, as amended, Tennessee Code Annotated, do hereby promulgate these rules and regulations.

DEFINITIONS

A. "Kind of work" or "field of work" shall be construed to mean the specific insects, plant diseases, or other pests in the control of which the licensee or prospective licensee shall propose to engage.

B. A "qualified operator" is the person responsible to the licensee for the application of measures for the control or eradication of insects, plant diseases, pest animals or other pests. The name of the qualified operator or operators shall appear on the license. Crew foremen, trainees, and helpers shall be under the direct supervision of a qualified operator.

C. "Branch office" shall be construed to mean any location other than the main or home office or point of headquarters or principle operation of a firm from which pest control activities are carried out. The maintenance of personnel and/or equipment at a point from which, sales are made

or solicited, or service rendered shall constitute a branch office within the meaning of these regulations. Each such branch office shall be under the direct supervision of a resident qualified operator.

D. "Resident qualified operator" shall be construed to mean an operator qualified in either of the classes as provided for by law and who is domiciled at or near each office or branch office. The pest control activities of each such office or branch office shall be supervised by such resident qualified operator or operators as are designated for the office during all regular work periods during which service is rendered. (Sec. 43-609, TCA, as amended).

E. "Commissioner" means the Commissioner of Agriculture, Tennessee Department of Agriculture.

F. "Department" shall mean Tennessee Department of Agriculture.

G. "Board" shall mean the Pest Control Licensing Board as described in 2 of the Act.

REGULATIONS

1. The applicant or license holder is responsible for providing bond and providing a qualified operator in the kind of work in which he shall practice. The license holder shall register with the Commissioner of Agriculture the name of all solicitors and agents.

2. A license and bond shall be required for each office or branch office maintaining either personnel or equipment and from which work is sold or contracted for locally and from which service is rendered. Each such office or branch office shall be in charge of a resident qualified operator. Each principal office must be under the supervision of a resident qualified operator of the first class as defined by law. A branch office may be under the supervision of a qualified operator of

the second class, as defined by law, provided that no such qualified operator of the second class may be assigned or designated to supervise activities of more than one such branch office.

When an individual has been in business for himself in this or in another state he shall not be eligible for a solicitor's license unless he can show he does not possess equipment to do the work. (Sec. 43-609, TCA, as amended).

3. How to Obtain a License;

(A) Application for license shall be submitted on a form furnished by the Department of Agriculture, and shall be filed at least three (3) days in advance of the next examination date. With his application, the applicant shall furnish copies of contracts which he proposes to use in the event a license is issued. The Department shall require the applicant to furnish names of references. No application for examination will be accepted unless the applicant shall have had two years experience in the professional services for which an examination is requested, or in lieu thereof, shall have had two years study in a recognized college or university, majoring in qualifying subjects.

(B) The applicant, if he is also an operator, or his designated operator, shall take an examination which may be oral, written, or both, as determined by the Board. A license when issued may be renewed annually by the payment of stipulated fees unless it has been revoked for cause; provided, that no license shall be renewed unless such licensee shall be actively engaged in the business or occupation for which he is licensed or shall have been so engaged within a six-months period immediately preceding the renewal date.

(C) Preliminary written examinations will be given within the first ten (10) days of the months of March, June, September, and

December. These preliminary examinations will be held in the cities of Memphis, Nashville, and Knoxville. Those applicants who correctly answer at least 70% of the questions on this preliminary examination will be notified of the date and hour to appear for completion of the examination before the assembled Pest Control Licensing Board at the next regular meeting.

The Pest Control Licensing Board will meet within the first ten (10) days of the months of January, April, July, and October. At that time the Board will further examine the applicants successfully passing the last preliminary examination by giving two or three written questions (all of which must be correctly answered for a license of the first class), together with such oral questions as the Board may deem necessary to determine the eligibility of the applicant.

(D) If the qualifications and other requirements of the applicant are satisfactory, the Board shall certify such fact to the Commissioner or his agent and shall stipulate the class of license for which the applicant is qualified as set forth by law. The Department shall then issue a license of the class certified by the Board and such license shall expire June 30 of each year.

(Sec. 43-609, TCA, as amended)

(E) Applicants who successfully pass the preliminary examination will be expected to appear before the Board at its next regular meeting on the date and at the time he is notified to appear. If illness or some other factor should make his appearance impossible or, if not impossible, a grave hardship, it shall be the responsibility of the applicant to advise the Board of these circumstances and request the completion of his examination at the regular meeting of the next quarter. The Board will then notify

the applicant of the alternative date and time set for him to appear. Failure of the applicant to make the notification and request stipulated above or failure of the applicant to appear on the alternative date, either of these, shall void his preliminary examination and, if the applicant shall still desire a license, he shall be required to file a new application and take another preliminary examination.

(F) If the Board shall determine that the applicant is not qualified for a license, then said applicant may be re-examined at the next regular examination. However, at the discretion of the Board, a third examination for any applicant may be deferred for six months after the second examination and the fourth or any succeeding examination may be deferred for one year following the third or any subsequent examination. Each application for re-examination must be accompanied by payment of ten ($10) dollars as required by law. (Sec. 43-609, TCA, as amended)

4. If, for any reason, the applicant's license is declared invalid, the Commissioner or his representative shall notify in writing the person to whom the license has been issued. The bonding company will be notified of the action taken, but the suspending or the revoking of a license shall in no way invalidate the bond for the duration of the contracts entered into by the licensee.

5. Reports:

(A) Each licensed pest control operator shall be required to report each month's business to the Department of Agriculture within 15 days of the end of each calendar month. Forms for these reports will be furnished by the Department and a report must be filed whether or not any service was performed. (Sec. 43-613, TCA, as amended)

(B) In addition to the reports required above, persons operating under licenses for termite control must enter into written contracts for all termite control work and must file copies of same with the Department of Agriculture as required by law. They must also report to the Department of Agriculture any cancellations, extensions, or transfers of contracts previously reported.

(Sec. 43-613, TCA, as amended)

(C) Failure to submit the reports as outlined above shall make the operator liable to the penalties set forth by law. For purposes of this section the date a report is postmarked shall be construed to govern whether a report is delinquent or not. Neglect or failure to pay the penalties imposed under this section shall be grounds for suspension of licenses as provided by law.

(Sec. 43-613, TCA, as amended)
(Sec. 43-614, TCA, as amended)

6. Termite Requirements:

Persons operating under licenses for termite control shall conform to the following regulations, or shall use other Department approved methods:

(A) A written contract shall be executed on every termite control job, one copy to be left with the property owner or his agent, a copy sent to the Department of Agriculture, and a copy retained by the operator. The contract should be for the termite treatment only. Where reconstruction work is done, it shall be figured separately from the termite treatment and retain its identity in the contract. If there is any doubt as to what is termite treatment or reconstruction, each can be handled by separate contracts.

(B) On each termite contract job, the operator shall give the following minimum service,

unless the contract shall specifically state why any requirement is unnecessary, or that the owner assumes the responsibility:

(1) Remove all scraps of wood or other debris or trash subject to attack by termites from underneath the building.

(2) Remove all wooden contacts between building and soil, both outside and inside. Wooden supports under building must rest on concrete footing or brick capped with concrete, or covered with a metal shield, the top of the brick or footing being not less than six (6) inches above the ground.

(3) Scrape off all termite tunnels from foundation walls and pillars.

(4) Cut adequate trenches in soil in contact with masonry around all foundation walls and pillars. Fill trenches with approved chemical at the stipulated rate as set forth in sub-paragraphs (7) and (8) below. The soil immediately around the point that pipes enter the soil shall be saturated with chemical.

When pipes have a non-metal packing that is not removed, care must be taken that the soil treatment above mentioned is sufficient to insure penetration of the soil below a depth to which such packing extends.

(5) Treat all hollow pillars, tile walls, foundation walls, chimneys, or any other structure likely to be penetrated by termites by injecting and flooding with an approved chemical at the stipulated rate as set forth in sub-paragraphs (7) and (8) below. All such structures must be drilled where necessary for flooding or be rodded to the footing.

(6) Treat concrete porches in contact with building by excavating area adjacent to house, trenching and applying chemicals underneath in the same manner as around pillars and foundation. If earth-filled terraces or porches cannot be voided, the fill must be treated by rodding or drilling. If drilled, it is preferable that drilling be from the top. In any case, it is the operator's responsibility to show that an adequate treatment has been given.

(7) Chemicals and Concentrations:

A. Soil Treatment:

To soil areas to be treated, apply one of the following chemicals at not less than the designated concentration:

Chemicals	Concentrations
Aldrin	0.5% applied in oil solution or water emulsion.

Chemicals	Concentrations
Benzene Hexachloride	0.8% of gamma isomer applied in oil solution or water emulsion.
Chlordane	1.0% applied in oil solution or water emulsion.
Dieldrin	0.5% applied in oil solution or water emulsion.
DDT	8.0% in oil solution
Lindane	0.8% in oil solution or water emulsion.

Trichlorobenzene 1 part to 3 parts oil.

Other materials may be used provided:

1. They are determined to be acceptable by the FHA, Architectural Standards Division, Washington, D. C.; or,
2. They meet a 5-year test conducted by the U. S. Forest Service, U. S. Department of Agriculture, or other established and generally recognized research agency; or,
3. They contain one or more of the above mentioned chemicals in the concentration recommended.

(8) Application;

A. Floor Joist Construction:

1. Existing Structures:

A. Apply to critical areas along foundation walls, around piers, and under slabs of porches, entrance platforms, patios, attached garages, carports, etc.

B. Apply at a rate of 1 gallon per 2½ lineal feet per foot of depth along both sides of foundation walls, piers, etc.

C. Voids of unit masonry foundation walls and piers, apply to voids at a rate of 1 gallon per 5 lineal feet.

2. Pre-treatment:

Make same application at the same rate stipulated above for existing structures and in addition, apply under porch floors,

entrance platforms, patios, attached garages, carports, etc., an overall treatment at a rate of 1 gallon per 10 square feet.

B. Slab-on-ground construction:

Treatment shall not be made when the soil or fill is excessively wet or immediately after heavy rains, to avoid surface flow of the toxicant from application site.

1. Pre-treatment:

A. Apply an over-all treatment under entire surface of floor slab including porch floors, entrance platforms, patios, attached garages, carports, etc., apply at a rate of 1 gallon per 10 square feet, except that if fill under slab is a coarse material, such as washed gravel, cinders, crushed stone, etc., apply at a rate of 1 gallon per 7 square feet.

B. Apply to critical areas along both sides of foundation wall at a rate of 1 gallon per 2½ lineal feet per foot of depth.

C. Voids of unit masonry foundation walls, apply at a rate of 1 gallon per 5 lineal feet.

2. Existing Structures:

Soil area under slab or adjacent thereto must be adequately treated at the known or potential termite entry areas such as, expansion joints, masonry voids, service entry points, etc.

(9) Reinspection:

Each property under contract by a termite control operator shall be re-examined by the operator at least annually or on owner's application. A report of the re-examination and all subsequent inspections showing the condition of the property with respect to the presence or absence of termites shall be filed with the property owner and a copy kept in the operator's files subject to inspection by the Department.

(10) At such times as he may deem desirable the Commissioner of Agriculture or his authorized representative shall examine properties treated for the purpose of determining the efficiency of the treatment given. Whenever unsatisfactory or substandard treatments are found, the operator and licensee will be notified and given a reasonable length of time in which to correct such conditions. If the operator shall neglect or refuse to make such corrections, his license will be suspended as provided for by law, unless he can show to the satisfaction of the Department of Agriculture why such action should not be taken. While his license is suspended, the operator or licensee shall have the privilege of examining and retreating all properties on which he has current contracts but shall not solicit any new business on penalty of immediate cancellation of his license. He shall notify the Department of Agriculture of the dates of all re-examinations and retreatments. When all properties previously reported in an unsatisfactory condition have been re-examined and re-treated, the Department of Agriculture shall then make the re-inspections at its earliest con-

venience. If the Department of Agriculture, on re-inspection, shall find all the properties in satisfactory condition, the suspension shall be removed, otherwise, the license of the operator shall be cancelled permanently. It is provided that the license of an operator or licensee may be cancelled immediately for gross neglect of contracts and general failure to give satisfactory service. (Sec. 43-614, TCA, as amended)

7. Where a gas, highly poisonous to human beings, is used to fumigate household pests, stored products, warehouses, etc., the following rules should be adhered to:

   (A) Possess at the place where the fumigation is being done a gas mask that is protective against the gas being used.

   (B) Post the building with conspicuous signs at all points of entry, including basement, that the property is being fumigated and no one should enter.

   (C) At all buildings, exclusive of vaults, ships, boxcars, trailers, etc., a guard shall be placed at the fumigation, even though it is posted as noted in (B) above, to prevent irresponsible persons from entering. The guard shall have access to a protective gas mask should it be needed.

   (D) A qualified operator shall be present and actively in charge of all fumigation work at the time the poison is being introduced or handled and shall check the evacuation prior to re-entry by persons not engaged in the fumigation procedure.

8. Notification shall be given as far in advance as possible to all beekeepers in the area where airplane dusting for insect or pest control is to be done. Notification to the Department of Agri-

culture as far as possible in advance of the time of the dusting shall be sufficient notice to comply with this regulation. The materials having the least toxic qualities to honeybees shall be used whenever possible.

9. The Department will investigate complaints against license holders and will check each operator's work from time to time, inspecting any or all jobs performed as seems best to the Department. Operators are required to furnish to the Department, on demand, true and complete information on number and identity of jobs performed, methods and materials used, or other information necessary to the enforcement of the Act.

10. Suspension or Revocation of License:

Licenses may be suspended or revoked for fraud, misrepresentation, violation or contract, using improper materials, or for other reasons specified in the Act, and for violation of any of the provisions of the Act or the Regulations promulgated pursuant thereto, as provided by law. (Sec. 43-613, TCA, as amended)

11. All rules and regulations heretofore promulgated on this subject are hereby revoked.

/s/ W. F. MOSS
Commissioner
Date: March 16, 1961

/s/ H. L. BRUER
Director of Entomology
& Plant Pathology
Date; March 16, 1961

Approved: March 20, 1961.

/s/ GEORGE F. McCANLESS
Attorney General

Filed with the Secretary of State on March 22, 1961.

/s/ JOE C. CARR

APPENDIX E

[Affidavit]

My name is Lester A. Meis and I reside at 25 Jade Drive in Victoria, Texas. I am president and technical director of the "Bugmobile" companies with corporate offices at 2305 North Laurent in Victoria, Texas, and at 4301 South Port in Corpus Christi, Texas.

I hold an A.B., B.S., and Master of Public Health degree from the University of California in bacteriology, Public health sanitation and public health engineering.

I have had in excess of 20 years experience in the field of general pest and rodent control, food plant sanitation and public health engineering.

I have worked for the Alameda County Health Department in California, the State Health Department of California, the U.S. Public Health Service, Orkin Exterminating Company and Texas Sanitation Company, Inc.

I am considered an expert in the field of public health sanitation, food plant sanitation and rodenticides and pesticides; serving on the pesticide committee of the American Public Health Association, I have served and serve as an industrial consultant in the field of food plant sanitation.

I am a "Fellow of the Royal Society of Health" and a "Fellow of the American Public Health Association" and an active member of the National Association of Sanitarians.

The State of Tennessee divides their licensing groups as follows:

As far as the need for protection of the public is concerned, there is little or no difference between the ten categories listed below except with reference to Termite Control which is reported under category #3–

1. Consulting Entomology.
2. Consulting Plant Pathology.

3. Structural Pest Control–household.
4. Storage, warehouse and transportation Pest Control.
5. Fumigation.
6. Agricultural Pest and Disease Control.
7. Agricultural Pest and Disease Control–aircraft application.
8. Control of Insects affecting Man and Animals.
9. Horticultural Spraying.
10. Rodent Control.

Other than for the fact that categories 1 and 2, where the public can be given misinformation and possibly cause extensive damages money-wise, categories 4 through 10 deserve much more regulation than category 3–which is Structural Pest Control–household.

Categories 4 through 10 utilize materials that are up to one hundred times more lethal than termite control chemicals. As an example, category 6–Agricultural Pest and Disease Control, the chemical Parathion is used extensively in treating crops and Parathion has an acute lethal dosage in milograms per kilogram (mg/kg) of 3.6 and 6.8 oral and dermal. Chlordane, the chemical of choice in termite control has an oral LD-50 of 335 and a dermal of 690–almost exactly one hundred times less toxic. If anything, the public need be protected on categories 4 through 10 whereas categories 1 through 3 have negligible public contact.

Categories 4 though 10 all utilize materials of high toxicity, in fact on a regular basis it could be said that the toxicity varies between 50 and 150 times that which is used in general termite control.

Some further examples–under category 4 (Storage, warehouse and transportation Pest Control) and category 5 (fumigation), where the use of Cyanide and Methal Bromide is extensive, both are highly toxic gasses.

There are very low specific skin threshold limits on toxic gasses whereas the skin threshold limit for chlorinated hydro carbons used in termite control are negligible.

Rodenticides under category 10 are very highly toxic as one part per million of 1080 or sodium flouracetate could be considered a toxic dose whereas there has never been a recorded case of a lethal dose of termiticide. One part per million of sodium flouracetate would be a lethal dose whereas 50,000-100,000 parts per million of Chlordane in water dilution or other termiticides would probably be considered a lethal dosage.

For the State of Tennessee to pick out one category such as #3—Structural Pest Control—household—as being in need of constant supervision compared to the other licensed categories is both fallacious and ridiculous.

Of the 10 categories, the ones that would require the least regulation with reference to dangers to the customer would be categories 1, 2 and 3.

The following are cited:

1. Journal of Environmental Health, the publication of the National Association of Sanitarians, Denver, Colorado.
2. Pest Control, the journal of the National Pest Control Association, published by Trade Magazines, Cleveland, Ohio.
3. Chemical and Natural Control of Pests, Reinhold Publishing Company of New York (1960).
4. Scientific Guide (2nd edition) to Pest Control Operations published by the Trade Magazines, Cleveland, Ohio.

It is my considered opinion that the dangers involved in termite control and the need for inspection as opposed to the dangers to the public in other fields is nil. The prime example being the toxicity of the materials used.

The public is never exposed to termite control materials as these materials are delivered to the control sites either beneath the slabs of the houses or beneath the subflooring of said houses and unless an individual specifically crawls

beneath the house he would never be exposed to the toxic materials. Such is not the case in categories 4, 5, 6, 7, 8, 9 or 10 where accidents do and have occurred and toxic materials have been and are used on a daily basis and where people can be harmed.

From a thorough search of the literature, it is shown that there has never been a proved case of poisoning involved in the use of termiticides, whereas the reason given for taxation put on to each termite contract by the State of Tennessee is "the treatment involving termites utilizes toxic poisons which are applied to private residences as well as commercial buildings". This statement is a half-truth and is absolutely arbitrary and unreasonable as the taxation has no basis of fact—utilizing the premise that termite control is more hazardous than other categories licensed and therefore need "more inspectional methods and control".

There are many pest control organizations that do termite control and also do work under the state of Tennessee categories 4, 5, 6, 7, 8, 9 and 10. As far as I know there are few, if any, companies that restrict themselves to termite control only as termite control has always been one of those many services performed by a general pest control company. None of the large corporations of this nation—whether they operate in Tennessee or not—limit themselves to only termite control. Conversely, we can say that as far as we know, there are no companies known as termite control organizations that limit themselves strictly to termite control but do at some time render service in all of the categories enumerated by the State of Tennessee. Therefore I must state that those organizations that practice termite control are not in a readily distinguishable class by themselves.

In my opinion, the State of Tennessee dividing termite control into a distinguishable class with reference to taxation is arbitrary, unreasonable and capricious and I can see no justification whatsoever for this subdivision either as a practice of the industry or based on factual distinctions between the treatments employed.

/s/ Lester A. Meis, M.P.H.
Public Health Engineer

Date: 11 October 1968

[Jurat Omitted in Printing]

APPENDIX F

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Herbert R. Rich, who after being duly sworn according to law, deposes and says:

That on or about February 6, 1967, I attended a meeting in the office of Paul Jennings at Nashville, Tennessee. Mr. Jennings is an Assistant State Attorney General and was handling charges preferred by the Department of Agriculture for the State of Tennessee against my client, Abbott Exterminating Company, a Tennessee corporation.

The charges involved certain violations allegedly committed by my client for which the State of Tennessee was seeking to revoke his license to operate. I had requested the meeting to discuss the charges and present at the meeting was Mr. H. L. Bruer representing the Department of Agriculture. Following a lengthy discussion I suggested that the charges be settled by my client paying all sums allegedly due to the State together with penalty and interest. Mr. Bruer stated that he would accept the offer provided the company, in addition to the said payment, surrender its license to operate.

I replied in substance that this was not a settlement at all since the State was offering no consideration for our agreement to pay and Mr. Bruer stated that criminal charges could be preferred and that the payment would be a way to avoid the preferral of such charges. Mr. Jennings took a passive position throughout the meeting and indicated to me that whatever settlement could be worked out with the Department of Agriculture would be acceptable to him.

Further deponent saith not.

/s/ HERBERT R. RICH
Deponent

[Jurat dated 11 October 1968]